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2011 JUL -6 PM 2:34

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA

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Attorneys for Defendant
LOWE'S HIW, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

CLIVE J. HENDERSON,

Plaintiff,

v.

LOWE'S HIW, INC., a Washington
corporation

Defendant.

Case No.: SACV 11-00995 JST (MLGx)

**DEFENDANT LOWE'S HIW, INC.'S
NOTICE OF REMOVAL OF ACTION
PURSUANT TO 28 U.S.C. §§ 1332,
1441, AND 1446 (DIVERSITY
JURISDICTION)**

ORANGE COUNTY SUPERIOR COURT
CASE NO. 30-2011-00453045-CU-OE-
CJC

*[Civil Cover Sheet, Notice of Interested
Parties, Notice of Related Cases, and
Certificate of Service Filed Concurrently
Herewith]*

1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR**
2 **THE CENTRAL DISTRICT OF CALIFORNIA:**

3 **PLEASE TAKE NOTICE** that Defendant Lowe's HIW, Inc. hereby removes
4 to this Court the state court action described below. This action is removable because
5 there is diversity of citizenship between the parties and the amount in controversy
6 exceeds the jurisdictional minimum. In support thereof, Defendant states as follows:
7

8 1. On February 24, 2011, an action was commenced in the Superior Court
9 of the State of California in and for the County of Orange, entitled *Clive J. Henderson*
10 *v. Lowe's HIW, Inc.*, as Case Number 30-2011-00453045-CU-OE-CJC. A copy of
11 the Summons and Plaintiff's Complaint is attached hereto as **Exhibit A**.
12

13 2. The first date upon which Defendant received a copy of the Complaint
14 was March 14, 2011, when Defendant was served with a copy of the Complaint and
15 the Summons from the state court. At the time, Defendant was not aware that the case
16 was removable in that Lowe's could not ascertain from the initial pleading that the
17 amount in controversy exceeded \$75,000. This removal is timely because Lowe's
18 received such notice on June 7, 2011 and files this removal within 30 days from the
19 date it received such notice "through service or otherwise, of a copy of an amended
20 pleading, motion, order or other paper from which it may first be ascertained that the
21 case is one which is or has become removable" pursuant to 28 U.S.C. § 1446.
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3. Defendant answered the Complaint in the Orange County Superior Court on April 11, 2011. A copy of Defendant's Answer is attached hereto as **Exhibit B**.

4. Venue lies in the United States District Court for the Central District of California because Plaintiff filed the Action in this judicial district and it remains pending in this judicial district. *See* 28 U.S.C. § 1441(a).

5. The United States District Court for the Central District of California has original jurisdiction of this action because diversity of citizenship jurisdiction exists pursuant to 28 U.S.C. § 1332. Removal is proper under 28 U.S.C. §§ 1332 and 1441 in that:

(a) Plaintiff Clive J. Henderson is a citizen and resident of the State of California. (Complaint ¶ 1.)

(b) Lowe's is not a citizen of California. The phrase "principal place of business" in 28 U.S.C. § 1332(c)(1) refers to the place where a corporation's high-level officers direct, control and coordinate the corporation's activities, *i.e.*, its "nerve center," which typically will be found at its corporate headquarters. *Hertz Corp. v. Friend*, 559 U.S. ---, 130 S.Ct. 1181, 1192-93 (2010). Lowe's headquarters -- where its high-level officers direct, control and coordinate the corporation's activities -- is located in North Carolina. (*See* Complaint ¶ 2.) Thus, for removal purposes, Lowe's is a citizen of the State of North Carolina, not California. Accordingly, the requisite diversity of citizenship exists. *See* 28 U.S.C. § 1332(c)(1).

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575 Market Street, Suite 3700
San Francisco, California 94105

(c) The amount in controversy in this case exceeds the sum or value of Seventy-Five Thousand Dollars (\$75,000) exclusive of interest and costs. Defendant need only show by a preponderance of the evidence that Plaintiff's claims place more than \$75,000 in issue. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403-04 (9th Cir. 1996). Although the Complaint does not specify the exact amount of damages that Plaintiff seeks, Defendant shows that, based upon the types of relief sought in the Complaint and the letter sent by Plaintiff to Defendant on June 7, 2011, detailing the Plaintiff's settlement demand, Plaintiff clearly seeks more than \$75,000 in damages:

(i) Plaintiff alleges in his Complaint that he suffered and continues to suffer losses in income based on Lowe's failure to transfer him to a sales position and has suffered from a worsening of his medical condition, and as such, that he is entitled to compensatory and general damages arising out of Defendant's allegedly discriminatory conduct.¹ In addition to these amounts, Plaintiff seeks punitive damages, attorneys' fees, and costs.

(ii) Further, Plaintiff admits that the amount in controversy far exceeds \$75,000. In a letter dated June 7, 2011, Plaintiff informed Lowe's that he is demanding a settlement of \$250,000. (Plaintiff's June 7, 2011 letter is attached hereto as **Exhibit C.**) In light of this demand, it is apparent that the amount in controversy

¹ Defendant categorically denies that it engaged in any wrongful conduct.

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San Francisco, California 94105

1 exceeds the jurisdictional minimum. *See Babasa v. LensCrafters, Inc.*, 498 F.3d 972,
2 975 (9th Cir. 2007) (letter from plaintiffs' counsel was sufficient to put the defendant
3 on notice that the amount in controversy between the parties exceeded diversity
4 jurisdiction requirements so as to support removal); *Cohn v. PetSmart, Inc.*, 281 F.3d
5 837, 840 (9th Cir. 2002) (holding that settlement demand made by Plaintiff in excess
6 of \$100,000 was sufficient to establish that the amount in controversy exceeded the
7 jurisdictional minimum); *Molina v. Lexmark Intern., Inc.*, No. CV 08-04796 MMM
8 (FMx), 2008 WL 4447678, at *4 (C.D. Cal. Sept. 30, 2008) ("A document reflecting a
9 settlement demand in excess of the jurisdictional minimum constitutes 'other paper'
10 sufficient to provide notice that a case is removable and starts the thirty day window
11 under § 1446(b).")

12 (iii) Defendant believes that, based on the letter dated June 7,
13 2011, the amount in controversy exceeds \$75,000. Based on the foregoing, the
14 jurisdictional amount in controversy requirement plainly is met. Removal to this
15 Court is proper under diversity of citizenship jurisdiction.

16 6. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and
17 orders served upon Defendant is attached hereto as follows:

- 18 (a) Exhibit A – Plaintiff's Summons and Complaint
- 19 (b) Exhibit B – Defendant Lowe's HIW, Inc.'s Answer
- 20 (c) Exhibit D – Other pleadings and orders


(d) Exhibit E – The state court’s docket

7. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon counsel for Plaintiff, and a copy is being filed with the clerk of the Superior Court for the State of California in and for the County of Orange.

WHEREFORE, Defendant hereby removes this action from the Superior Court of the State of California, County of Orange, to this Court, pursuant to 28 U.S.C. § 1441.

DATED: July 6, 2011

HUNTON & WILLIAMS LLP

By: 
Christiane A. Roussell
Attorneys for Defendant
LOWE’S HIW, INC.

Hunton & Williams LLP
575 Market Street, Suite 3700
San Francisco, California 94105

EXHIBIT A

SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

Lowe's HIW, Inc., a Washington Corporation

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

Clive J. Henderson

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

02/28/2011 at 12:16:00 PM

Clerk of the Superior Court
By Maarit H Nordman, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desear el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court, County of Orange
Central Justice Center
700 Civic Center Drive West, Santa Ana, CA 92701

CASE NUMBER:
(Número del Caso): 30-2011-00453045-CU-OE-CJC
Judge Tam Nomoto Schumann

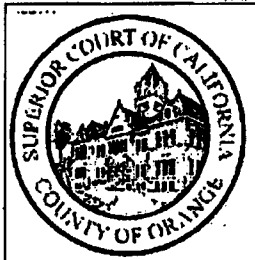
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Thomas L. Difloure, Attorney at Law, 13952 Bora Bora Way #319 Marina del Rey, CA 90292 (310) 823-8052

DATE: 02/28/2011 ALAN CARLSON, Clerk of the Court
(Fecha, (secretario))

rk. by Maarit H Nordman, Deputy
(secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

Maarit H Nordman



NOTICE TO THE PERSON SERVED: You are served.

1. ☐ as an individual defendant.
2. ☒ as the person sued under the fictitious name of (specify):
Lowe's HIW, Inc., a Washington Corporation
3. ☒ on behalf of (specify):
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 (Rev. July 1, 2005)

SUMMONS

Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

02/24/2011 at 09:52:51 AM

Clerk of the Superior Court
By Enrique Veloz, Deputy Clerk

THOMAS L. DIFLOURE SBN 166325
Attorney at Law
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310-823-8052 (tel.)
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Attorney for Plaintiff Clive J. Henderson

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

CLIVE J. HENDERSON,
Plaintiff,

vs.

LOWE'S HIW, INC., a Washington
corporation,
Defendant.

Case No. 30-2011-00463046-CU-0E-CJC

COMPLAINT FOR DAMAGES:

1. Employment Discrimination -
Cal. Gov't Code Section 12940(a);
2. Employment Discrimination in Violation
of Public Policy;
3. Failure to Prevent Discrimination -
Cal. Gov't Code Section 12940(k);
4. Failure to Accommodate Disability -
Cal. Gov't Code Section 12940(m)
5. Failure to Enter Into a Good Faith
Interactive Process -
Cal. Gov't Code Section 12940(n)

Judge Tam Nomoto Schumann

GENERAL ALLEGATIONS

Plaintiff Clive J. Henderson alleges as follows:

1. Plaintiff Clive J. Henderson ("Plaintiff") is a 64 year old white male and a resident of Santa Fe Springs, County of Los Angeles, California.
2. Defendant Lowe's HIW Inc. ("Lowe's") is a Washington corporation whose principal place of business, on information and belief, is in Mount Mourne, North Carolina. On further information and belief, Defendant is a subsidiary of Lowe's Inc., a North Carolina corporation that owns more than 1700 home improvement stores across the United States, including stores in California and the County of Orange. Lowe's Inc.

1 does business in California through Lowe's HIW Inc.

2 3. Plaintiff was at all times relevant an employee entitled to the protection of
3 California Government Code ("G.C.") § 12940 et seq., which prohibits discrimination in
4 employment on the basis of race, religious creed, color, national origin, ancestry, physical
5 disability, mental disability, medical condition, marital status, sex, or sexual orientation.

6 4. Lowe's HIW, Inc. was at all times relevant an employer as defined by
7 Government Code § 12926 and as such barred from engaging in any employment practice
8 prohibited by Government Code § 12940 et seq.

9 5. On April 27, 2008, Plaintiff was hired as a Kitchen Cabinet Designer
10 Consultant at the Lowe's store located at 2500 Park Avenue, Tustin, County of Orange,
11 CA. Plaintiff was 62 years old at the time he was hired. Plaintiff's duties included
12 designing kitchens and bathrooms for customers based on specific requirements they
13 provided. Plaintiff helped with the sales of kitchen appliances during peak periods and
14 lunch breaks and also spent approximately two hours a day selling and assisting in the
15 plumbing department. Plaintiff worked in this department on a regular schedule of either
16 8 a.m. to 5 p.m. or 10 a.m. to 7 p.m.

17 6. Prior to his employment with defendant Lowe's HIW, Inc., plaintiff's retail
18 work experience included working in the textile department for Ikea in Costa Mesa and as
19 a Small Business Design Consultant at Ikea in Covina, California. Plaintiff has extensive
20 work experience in the motion picture and television industry, including work as an art
21 director, prop master or set decorator on approximately one thousand (1000)
22 commercials, as well as work experience as a designer of large scale exhibits for
23 international trade shows in Europe, professional architectural and advertising
24 photographer and custom photographic printmaker.

25 7. Approximately one year after Plaintiff was hired, Malik Adams ("Adams"),
26 Sales Manager for the Kitchen Cabinet Design Department at that time, told Plaintiff that
27 he had to sell two complete kitchens per week retailing for at least \$20,000 each or he
28

1 would be terminated. Plaintiff was unable to do so and after two weeks, Adams
2 suggested that in order to not be terminated that Plaintiff write an email to him requesting
3 a withdrawal from the Kitchen Cabinet Design department. Plaintiff did so. Plaintiff also
4 wrote that given the state of the economy at that time, selling two kitchens per week at
5 \$20,000 was not a realistic goal and that if possible, Plaintiff would like a transfer to
6 hardware, paints, or the outside gardening departments.

7 8. Instead of a transfer to another sales position, Plaintiff was moved to the front
8 of the store as a self checkout cashier where he has remained since about May, 2009.

9 9. After being moved to the cashier position, Plaintiff made several requests
10 over a period of ten months to Jeff Enriquez ("Enriquez"), the former Human Resource
11 Manager, to be moved back to sales. All of Plaintiff's requests were denied.

12 10. Since Plaintiff moved to the cashier position in 2009, the store has hired
13 additional younger employees in the position of cashiers (some part time). Some of these
14 younger employees were moved into sales after only a few weeks of working in the front
15 of the store. For example, two new hires were transferred into the tool/hardware
16 department after only a few weeks of employment (Miguel Torres and another person
17 Plaintiff does not know); two people were transferred into the electrical department
18 (Lance Kirsten and Amanda Onesky); one person into the decor department (Brittany
19 Haack, who had been a cashier longer than Plaintiff); two people into tools (Andre
20 Alvarez and Darryl Walters); as well as other transfers within the store to other
21 departments.

22 11. Plaintiff has been asking for a transfer back onto the sales floor for more than
23 a year. When Plaintiff pointed out to Enriquez, that other, newer employees were being
24 given sales positions, Enriquez told Plaintiff that he had not filled out the Consideration
25 Forms for those departments. Plaintiff pointed out that he had never been told that the
26 Consideration Form was a requirement. Plaintiff has since filled out Consideration Forms
27 for every department, but has not been transferred.

1 12. Amanda Onesky, Miguel Torres, and Lance Kirsten all told Plaintiff they had
2 not filled out Consideration Forms before being assigned to their new departments.
3 Given that the company has transferred other younger employees with less experience on
4 the job, and who in at least three instances, did not fill out the form Plaintiff was told he
5 had to fill out, Plaintiff believes that Lowe's discriminated against him because of his
6 age.

7 13. On information and belief, there are at least thirteen different positions for
8 which Plaintiff would be qualified with minimum training, if any at all was needed,
9 including commercial sales, delivery, receiving and assembly.

10 14. Plaintiff has suffered from Type 2 diabetes for approximately ten years. At
11 the time Plaintiff was hired in 2008, he told the interviewer in Human Resources about
12 his medical condition.

13 15. Plaintiff's diabetes can be controlled with medication, including insulin,
14 which he has to inject three times a day and by a dietary regimen which requires him to
15 eat regular meals on a fixed schedule so that his blood sugar level does not fluctuate
16 wildly.

17 16. When Plaintiff worked as a Kitchen Cabinet Designer Consultant for one
18 year, his work schedule started at 8:00 am or 10:00 am and he was able to take regular
19 meal breaks, take breaks to take his oral medication and was able to control his blood
20 sugar level.

21 17. However, after his job change to cashier, Plaintiff's work hours changed to an
22 irregular schedule of three shifts - 6 am to 2:45 pm, 2:00pm to 11:00pm, and 1:00pm to
23 9:00pm. These hours varied from day to day and week to week on no fixed schedule.
24 Following his transfer, Plaintiff's diabetes worsened and he began to inject insulin to
25 control his diabetes.

26 18. As a result of Plaintiff's random work schedule, Plaintiff is unable to control
27 his blood sugar levels because he needs to take his medications and insulin injections at
28

1 regular intervals on a consistent schedule daily. This varied schedule also interrupts
2 Plaintiff's regular sleep pattern, which affects his blood sugar levels and other aspects of
3 his health.

4 19. As a result of this random work scheduling, Plaintiff has had alarming swings
5 of his blood sugar test readings. During a consultation with his doctor, Henya Paul,
6 M.D., she stated that the fluctuations in his blood sugar levels were adversely affecting
7 his health.

8 20. On September 24, 2009, Dr. Paul wrote to Lowe's stating that Plaintiff's
9 diabetes was out of control and that he had to be on a regular work schedule, for example
10 from 8am to 5 pm, and that he required the same meal time every day to regulate his
11 blood sugar level, administer insulin and other medications he take and that he could not
12 continue to work on a variable schedule.

13 21. Dr. Paul gave her telephone number for Lowe's to contact her. Enriquez, the
14 HR manager, told Plaintiff to fill out an ADA Accommodation Request Form, which he
15 did. Enriquez then gave Plaintiff an Interactive Process Form. Plaintiff completed these
16 forms along with his doctor's letter and submitted them to Lowe's. However, Lowe's
17 never contacted Dr. Paul to discuss Plaintiff's condition.

18 22. After Plaintiff submitted his letter from Dr. Paul, Enriquez informed Plaintiff
19 that his request was being sent on to the Legal Department at Lowe's corporate offices.
20 At this point, Plaintiff hired the undersigned to represent him.

21 23. Plaintiff's counsel wrote a letter on November 2, 2009 to Enriquez advising
22 Lowe's that he represented Plaintiff and detailing Plaintiff's disability, the requirements
23 for a regular schedule because of his disability and offering to work with Lowe's to work
24 out a reasonable solution.

25 24. Plaintiff's counsel was contacted in early November 2009, by Lowe's
26 corporate legal department. Through his counsel, Plaintiff, proposed alternative
27 solutions, including transferring Plaintiff to a department with a fixed work schedule in
28

1 the store in which he currently work or transferring to another store where he could have
2 a fixed schedule.

3 25. On December 21, 2009, Plaintiff went on medical leave for chronic
4 degenerative arthritis. Plaintiff returned to work on January 27, 2010.

5 26. Lowe's has twenty (20) stores within twenty-five (25) miles of Plaintiff's
6 home. Plaintiff currently drives twenty-three (23) miles to the store in Tustin, so Plaintiff
7 could easily commute to any of the 20 Lowe's stores within the 25 miles of his home.

8 27. Lowe's has accommodated other employees with diabetes at the Tustin store
9 where Plaintiff works, including an employee in the flooring department who works a 10
10 a.m. to 7 p.m. schedule and another employee who is given time off for his doctor's
11 appointments.

12 28. Around the beginning of March, 2010, Plaintiff applied for and was
13 interviewed for a new opening in Kitchen Cabinets, his old department, but was not hired
14 for the position.

15 29. On Thursday, March 18, 2010, Plaintiff received his first evaluation since he
16 was hired in 2008. This was a Good evaluation by the Front End Manager, Anonka
17 Rasheed, at which point Plaintiff was told he was to receive an increase of \$.17 per hour.
18 Ms. Rasheed asked Plaintiff what his goals were and Plaintiff stated he desired to get
19 back on the sales floor. She said she was aware there was an opening in Paint coming up
20 and that she would assist in his training in that area. Plaintiff did not hear any more
21 regarding this position as of the date of the filing of this complaint.

22 30. At the end of May, 2010 Plaintiff applied on-line for a PSA (Product Service
23 Associate) position which includes setting up displays and replenishing stock. On June
24 17, 2010, Plaintiff asked the new HR Manager, Stephanie Rodriguez ("Rodriguez") when
25 he would be called for an interview for this position. She informed him that the position
26 had been filled by Michael Talibsa Lebrilla, a young man in his early twenties, who was
27 in Facilities Services working as a janitor).

1 31. Plaintiff asked her why he had not been interviewed for the position and she
2 then asked him if he was able to operate the store's forklift and other lifting equipment.
3 Plaintiff told her that he had used them before and pointed out to her that he had worked
4 doing international trade show designs and constructions world wide, as stated in his
5 resume. Plaintiff asked her if she had read his resume and she did not reply. Plaintiff
6 presumes from her lack of a response that she had not read his resume before rejecting
7 him for the position.

8 32. In total, Plaintiff estimates he has applied for approximately thirty different
9 positions within the past six months, including positions at the Tustin store where he is
10 currently employed, as well as Lowe's stores in Pico Rivera, Norwalk and Long Beach.

11 33. Plaintiff continues to have medical problems related to his diabetes that are
12 directly related to his inability to have a set schedule for meals and breaks to take his
13 medication. Plaintiff has had a partial hearing loss for many years. However, his hearing
14 loss has continued to get worse, which his doctor, Dr. Edward Chi-Min Wang, of Kaiser
15 Permanente in Downey, attributed directly to Plaintiff's diabetes and his problems with
16 controlling his blood sugar levels when Plaintiff was examined by Dr. Wang in August,
17 2010.

18 34. Plaintiff filed timely a Complaint of Discrimination with the California
19 Department of Fair Employment and Housing ("DFEH"), and received a Notice of Case
20 Closure and Right to Sue dated September 13, 2010. Plaintiff's DFEH Complaint and
21 Notice of Case Closure are attached as Exhibit "A" and incorporated by reference. By
22 filing his complaints with the DFEH and receiving his Notice of Case Closure from the
23 DFEH, plaintiff has exhausted all necessary administrative remedies required under law
24 as a prerequisite to filing this action.

25 ///

26 ///

FIRST CAUSE OF ACTION

**Discrimination in Violation of Government Code §12940 (a)
Based on Age and Physical Disability**

35. Plaintiff incorporates Paragraphs 1-31 as if set forth herein in full.

36. Lowe's has discriminated against Plaintiff based on his age by hiring younger, less experienced employees than Plaintiff for sales positions for which Plaintiff was more qualified based on his many years of experience than other applicants. In several instances, Plaintiff was told he had not filled out a Consideration Form for the position, a prerequisite not required of younger employees who were hired for the sales positions. Therefore, Lowe's was operating under two sets of requirements for consideration for a job transfer - one for younger employees and a different, stricter standard for Plaintiff.

37. Lowe's has known since Plaintiff was hired in 2008 that Plaintiff suffers from diabetes. Lowe's discriminated against Plaintiff based on his physical disability by refusing to give Plaintiff a set work schedule that would enable Plaintiff to take regular meal breaks at approximately the same time every day and enable Plaintiff to take his medication at regular intervals. Lowe's failure to either place Plaintiff on a regular schedule in the front cashier position or transfer him to a sales position with a regular schedule at either the Tustin store or one of the nineteen other stores in his area, has caused Plaintiff to suffer adverse symptoms brought on by his inability to control his diabetes.

38. As a proximate result of Lowe's discrimination against Plaintiff, Plaintiff has suffered and continues to suffer losses in income based on Lowe's failure to transfer him to a sales position and has suffered from a worsening of his medical condition. Therefore Plaintiff should be awarded damages in an amount according to proof.

39. Lowe's committed the acts alleged herein maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil

1 motive amounting to malice, and in conscious disregard of Plaintiff's rights. Plaintiff is
 2 thus entitled to recover punitive damages from Defendants in an amount according to
 3 proof.

4 40. As a result of Lowe's discriminatory acts alleged herein, Plaintiff is entitled
 5 to reasonable attorney's fees and costs of this suit as provided by G.C. §12965(b).

6 7 **SECOND CAUSE OF ACTION**

8 **Discrimination in Violation of Public Policy** 9 **Discrimination based on Age and Physical Disability**

10 41. Plaintiff incorporates Paragraphs 1-38 as if set forth in full.

11 42. The public policy of the State of California, as set forth in state statutes and
 12 the California Constitution, is strongly opposed to discrimination in employment
 13 including, but not limited to, denial of employment opportunities, based solely upon age
 14 or physical disability.

15 43. Defendant Lowe's conduct as set forth in the First Cause of Action, violated
 16 the public policy of the State of California, and, as a result of the acts of Lowe's against
 17 Plaintiff because of his age and medical condition, Plaintiff has been discriminated
 18 against in the terms of his employment and working conditions in violation of the public
 19 policy of this state.

20 44. As a proximate result of Lowe's discrimination against Plaintiff, Plaintiff has
 21 suffered and continues to suffer losses in income based on Lowe's failure to transfer him
 22 to a sales position and has suffered from a worsening of his medical condition. Therefore
 23 Plaintiff should be awarded damages in an amount according to proof.

24 45. Lowe's committed the acts alleged herein maliciously, fraudulently, and
 25 oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil
 26 motive amounting to malice, and in conscious disregard of Plaintiff's rights. Plaintiff is
 27 thus entitled to recover punitive damages from Defendants in an amount according to

1 proof.

2
3 **THIRD CAUSE OF ACTION**

4 **Failure to Prevent Discrimination**
5 **in Violation of Government Code §12940 (k)**

6 46. Plaintiff incorporates Paragraphs 1-42 as if set forth in full.

7 47. As a corporation doing business in California, Lowe's knew or should have
8 known that it was subject to the laws of the State of California, in particular G.C. §12940
9 et seq., as well as California public policy against discrimination based on age and
10 physical disability.

11 48. Lowe's failed to take all reasonable steps to prevent discrimination against
12 Plaintiff from occurring in his workplace in violation of G.C. §12940(l), as set forth
13 herein. As a direct result of Lowe's failure to prevent discrimination, including the
14 proper training and supervision of management and human resources personnel, Lowe's
15 discriminated against Plaintiff based on his age and physical disability as set forth herein.

16 49. As a proximate result of Lowe's discrimination against Plaintiff, Plaintiff has
17 suffered and continues to suffer losses in income based on Lowe's failure to transfer him
18 to a sales position and has suffered from a worsening of his medical condition. Therefore
19 Plaintiff should be awarded damages in an amount according to proof.

20 **FOURTH CAUSE OF ACTION**

21 **Failure to Make Reasonable Accommodations**
22 **in Violation of Government Code §12940 (m)**

23 50. Plaintiff incorporates Paragraphs 1-46 as if set forth in full.

24 51. Lowe's discriminated against Plaintiff by failing to make reasonable
25 accommodations for Plaintiff's physical disability, i.e. his diabetes, by refusing to give
26 Plaintiff a fixed schedule in his position as a front of store cashier, so that Plaintiff could
27 eat and take his medication at regular intervals on a daily basis.

1 diabetes based on Lowe's failure to engage in an interactive process to accommodate
2 Plaintiff's physical disability. Therefore Plaintiff should be awarded damages in an
3 amount according to proof.

4
5 **WHEREFORE, PLAINTIFF PRAYS:**

6 **As to the First Cause of Action:**

- 7 1. For compensatory damages in an amount to be proven at trial;
8 2. For exemplary damages in an amount to be proven at trial;

9 **As to the Second Cause of Action:**

- 10 1. For compensatory damages in an amount to be proven at trial;
11 2. For exemplary damages in an amount to be proven at trial;

12 **As to the Third Cause of Action:**

- 13 1. For compensatory damages in an amount to be proven at trial;

14 **As to the Fourth Cause of Action:**

- 15 1. For compensatory damages in an amount to be proven at trial;

16 **As to the Fifth Cause of Action:**

- 17 1. For compensatory damages in an amount to be proven at trial;

18 **As to All Causes of Action:**

- 19 1. For compensatory damages in an amount to be proved at trial;
20 2. For general damages in an amount to be proven at trial;
21 3. For all other such relief as the court may deem just and proper;
22 4. For costs as allowed by statute;
23 5. For attorney fees as allowed by statute.

24
25 Dated: February 22, 2011

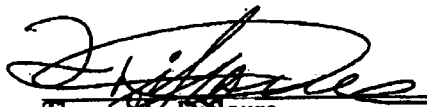
26 
27 Thomas L. Dufoure
28 Attorney for Plaintiff
Clive J. Henderson

EXHIBIT A

*** EMPLOYMENT ***

COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACTDFEH # E-201011-R-0177-00-apr

DFEH USE ONLY

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

YOUR NAME (Indicate Mr. or Ms.)

CLIVE JOHN HENDERSON

TELEPHONE NUMBER (INCLUDE AREA CODE)

562 868 5840

ADDRESS

10054 ASPEN CIRCLE

CITY/STATE/ZIP

SANTA FE SPRINGSCA 90670

COUNTY

COUNTY CODE

NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, OR STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME:

NAME

LOWES

TELEPHONE NUMBER (Include Area Code)

ADDRESS

2500 PARK AVE

DFEH USE ONLY

CITY/STATE/ZIP

TUSTINCA 92782

COUNTY

COUNTY CODE

NO. OF EMPLOYEES/MEMBERS (if known)

148

DATE MOST RECENT OR CONTINUING DISCRIMINATION

TOOK PLACE (month, day, and year) 6.17.10

RESPONDENT CODE

THE PARTICULARS ARE:

I allege that on OCTOBER 24, 2009, the following conduct occurred:

☐ termination
☐ by off
☐ demotion
☐ harassment
☐ genetic characteristics testing
☐ constructive discharge (threat to quit)
☐ incommunicable non-job-related inquiry

☒ denial of employment
☒ denial of promotion
☒ denial of transfer
☒ denial of accommodation
☒ failure to prevent discrimination or retaliation
☒ retaliation
☒ other (specify) SEE INSERT ONE

☐ denial of family or medical leave
☐ denial of pregnancy leave
☐ denial of equal pay
☐ denial of right to wear points
☐ denial of pregnancy accommodation

by JEFF ENRIQUEZ

Name of Person

HR HUMAN RESOURCES

Job Title (supervisor/manager/personnel director/etc.)

because of:

☒ sex
☐ age
☐ religion
☐ race/ethnicity

☐ national origin/ancestry
☐ marital status
☐ sexual orientation
☐ ancestry

☒ disability (physical or mental)
☐ medical condition (heart or genetic characteristic)
☒ other (specify) DIABETES

☒ retaliation for engaging in protected activity or requesting a protected leave or accommodation

State what you believe to be the reason(s) for discrimination MY DOCTOR HENYA PAUL MD HAS REQUESTED THAT I BE PUT ON A REGULAR SCHEDULE 8AM-5PM TO ENABLE BLOOD SUGAR CONTROL. WHICH I GAVE TO JEFF ENRIQUEZ HR

I wish to pursue this matter in court. I hereby request that the Department of Fair Employment and Housing provide a right-to-sue notice. I understand that if I want a federal notice of right-to-sue, I must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of the DFEH "Notice of Case Closure," or within 300 days of the alleged discriminatory act, whichever is earlier.

I have not been coerced into making this request, nor do I make it based on fear of retaliation if I do not do so. I understand it is the Department of Fair Employment and Housing's policy to not process or reopen a complaint once the complaint has been closed on the basis of "Complaint Elected Court Action."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge except as to matters stated on my information and belief, and as to those matters I believe it to be true.

Dated

3-18-10Clive Henderson

COMPLAINANT'S SIGNATURE

At

SANTA FE SPRINGS

City

RECEIVED

DATE FILED: 8-30-2010 AUG 30 2010

DFEH-300-03 (04/08)

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

Department of Fair Employment
and Housing

STATE OF CALIFORNIA

Clive J. Henderson

Insert 1

On April 27, 2008, I was hired as a Kitchen Cabinet Designer Consultant at Lowe's, 2500 Park Avenue, Tustin, CA 92782 at the age of 62. I designed kitchens and bathrooms for customers specific to the measurements they provided. I also helped with the sales of kitchen appliances during peak periods and lunch breaks. Also, I spent approximately two hours a day selling and assisting in the plumbing department.

I have had Type 2 diabetes for approximately ten years. It is treatable with insulin and other medications and with diet, including eating on a regular schedule. As long as I am able to control my blood sugar level with medication and diet, my disability does not affect my ability to perform the work that I have been doing at Lowe's in any of the departments in which I have worked.

Approximately one year after I was hired, Malik Adams, Sales Manager for my department at that time, told me that I had to sell two complete kitchens per week retailing for at least \$20,000 each or I would be terminated. I was unable to do so and after two weeks, Adams suggested that in order to not be terminated that I write an email to him requesting a withdrawal from Kitchen Cabinet Design department. I did so. I also wrote that given the state of the economy at that time, selling two kitchens per week at \$20,000 was not a realistic goal and that if possible, could he move me to hardware, paints, or outside gardening departments. Instead, I was moved to the front of the store as self checkout cashier where I have remained since that about May, 2009.

After being moved to cashier, I made several requests over a period of ten months to Jeff Enriquez, the former Human Resource Manager, to be moved back to sales. My requests were denied.

Since I moved to cashiering a year ago in 2009, the store has hired additional younger employees in the position of cashiers (some part time). Some of these younger employees were moved into sales after only a few weeks of working in the front of the store. For example two new hires were transferred into the tool/hardware department (Miguel Torres after only a few weeks of employment and another person whose name I don't know); two more people were transferred into the electrical department (Lance Kirsten and Amanda Onesky), one person into the decor department (Brittany Haack, who had been a cashier longer than me); two people into tools (Andre Alvarez and Darryl Walters); as well as other transfers within the store to other departments.

I have been asking for a transfer back onto the floor for almost a year. When I pointed this out to Jeff Enriquez, he told me that I had not filled out the Consideration Forms for those departments. I pointed out that he had never mentioned before that the Consideration Form was a requirement. I have since filled out Consideration Forms for every department, but have not been transferred. Amanda Onesky, Miguel Torres, and Lance Kirsten all told me they had not filled out Consideration Forms before being assigned to their new departments.

Given that the company has transferred other younger employees with less experience on the job, and who in at least three instances, did not fill out the form I was told I had to fill out, I believe that Lowe's has discriminated against me because of my age.

I feel there is room for reasonable accommodation that would be advantageous to me as well as Lowe's. Since I know that it takes time to train a new person in any of these positions, I have the advantage of having experience.

I have been a Type 2 diabetic for ten years. My diabetes can be controlled with medication, including insulin, which I have to inject three times a day and by a dietary regimen which requires me to eat regular meals on a fixed schedule so that my blood sugar level does not fluctuate wildly. When I worked as a Kitchen Cabinet Designer Consultant for one year, my work schedule started at 8:00 am or 10:00 am and I was able to take regular meal breaks, take breaks to inject my insulin and was able to control my blood sugar level.

However, after my job change to cashier, my hours changed to an irregular schedule of three shifts - 6 am to 2:45 pm, 2:00pm to 11:00pm, and 1:00pm to 9:00pm. These hours varied from day to day and week to week on no fixed schedule. I was not able to control my blood sugar levels because I needed to take my medications and insulin injections at regular intervals on a consistent schedule daily, and these varied hours interrupted my regular sleep pattern.

As a result of this random work scheduling, I had alarming swings of my blood sugar test readings. After a consultation with my doctor, Henry Paul, M.D., she stated that the fluctuations in my blood sugar levels were affecting my health.

On September 24, 2009, Dr. Paul wrote to Lowe's stating that my diabetes was out of control and that I had to be on a regular work schedule, for example from 8am to 5 pm, that I required the same meal time every day to regulate my blood sugar level, administer insulin and other medications I take and that I could not have a variable schedule. Dr. Paul gave her telephone number for Lowe's to contact her.

Jeff Enriquez, the HR manager, told me to fill out an ADA Accommodation Request Form, which I did. Mr. Enriquez then gave me an Interactive Process Form. I completed these forms along with my doctor and submitted them to Lowe's.

Mr. Enriquez then informed me this was being sent on to the Legal Department at Lowe's Corporate offices. At this point, I hired an attorney, Thomas Difloure to represent me.

Mr. Difloure wrote a letter on November 2, 2009 to Mr. Enriquez advising Lowe's that he represented me and detailing my disability, the requirements for a regular schedule because of my disability and offering to work with Lowe's to work out a reasonable solution.

Mr. Difloure was contacted in early November 2009, by Trey O'Neale, from Lowe's corporate legal department. In

spite of my attorney's efforts through phone and emails to Mr. O'Neale, Lowe's failed to offer any solution. Mr. O'Neale stopped returning phone calls and emails from my attorney around the end of November, 2009 and he has had no contact with Lowe's since that time.

The solutions I proposed included transferring me to a department with a fixed work schedule in the store I currently work or move me to another store where I could have a fixed schedule.

There is at least one person at my store who has a set schedule. Her name is Marlyn Thompson who is also a Type 2 diabetic. Her preferred schedule is 10 am to 7 pm which suits her better, since she does not live as far away as I do. She works in the flooring department. There is one other person, Eric Hombeck, a Type 1 diabetic who is accommodated by management for time off for doctor appointments. As stated above, my doctor feels that an 8 am to 5 pm shift would work better with my body rhythms with the added hour to hour and a half commute each way which adds to the stress on my diabetes.

Around the beginning of March, 2010, I applied for and was interviewed for a new opening in Kitchen Cabinets, my old department, but did not get the position.

On Thursday, March 18, 2010, I received my first evaluation since I was hired two years ago. This was a Good evaluation by the Front End Manager, Anonka Rasheed, at which point I was told I was to receive an increase of \$.17 per hour. Ms. Rasheed asked what my goals were and I stated I desired to get back on the sales floor. She said she was aware there was an opening in Paint coming up and that she would assist in my training in that area. I have not heard any more regarding this position as of the date of the filing of this complaint.

The cashier position has caused other problems for me. On one occasion when I was covering the Lumber cashier, I had called to Gudelia Lovo, the head cashier, to tell her I needed to use the bathroom urgently and to please send someone to cover for me. I called her four times over a 40 minute period. Each time she told me she was sending someone. No one showed up. Since I'm not allowed to leave a register unattended, I had the embarrassing occurrence of having uncontrolled diarrhea in my pants. I mentioned this to the office manager, Ms. Rasheed, that I didn't want this to occur again.

I continue to have health problem related to my diabetes because I do not have a regular schedule that allows me to eat on a regular schedule and take my medication. I feel that Lowe's has had the opportunity to move me to another department in sales with a regular work schedule but has refused to do so with the intent of forcing me to quit because of my health. Given that other, younger, less experienced employees have been promoted and transferred into sales positions for which I was qualified and had more experience and time with the company, I can see no basis for my treatment by Lowe's other than discrimination based on my physical disability and age.



STATE OF CALIFORNIA | State and Consumer Services Agency

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

PHYLLIS W. CHENG, Director

1055 West 7th Street | Suite 1400 | Los Angeles | CA 90017
(213) 439-6799 | TTY (800) 700-2320 | Fax (213) 439-6780
www.dfeh.ca.gov

September 13, 2010

CLIVE JOHN HENDERSON
10054 Aspen Circle
Santa Fe Springs, CA 90670

RE: E201011R0177-00-aprc
HENDERSON/LOWES

Dear CLIVE JOHN HENDERSON:

NOTICE OF CASE CLOSURE

This letter informs that the above-referenced complaint that was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective August 30, 2010 because an immediate right-to-sue notice was requested. DFEH will take no further action on the complaint.

This letter is also the Right-To-Sue Notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

If a federal notice of Right-To-Sue is wanted, the U.S. Equal Employment Opportunity Commission (EEOC) must be visited to file a complaint within 30 days of receipt of this DFEH *Notice of Case Closure* or within 300 days of the alleged discriminatory act, whichever is earlier.

Notice of Case Closure
Page Two

DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,

A handwritten signature in cursive script that reads "Tina Walker".

Tina Walker
District Administrator

cc: Case File

Jeff Enriquez
Human Resources Manager
LOWES
2500 Park Avenue
Tustin, CA 92782

DFEH-200-43 (08/06)

EXHIBIT B

1 HUNTON & WILLIAMS LLP
2 EMILY BURKHARDT VICENTE (State Bar No. 263990)
3 CHRISTIANE A. ROUSSELL (State Bar No. 249847)
4 550 S. Hope Street, Suite 2000
5 Los Angeles, California 90071
6 Telephone: (213) 532-2000
7 Facsimile: (213) 532-2020
8 Email: ebvicente@hunton.com
9 Email: crousell@hunton.com

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

04/11/2011 at 10:14:00 AM
Clerk of the Superior Court
By Maarit H Nordman, Deputy Clerk

10 Attorneys for Defendant
11 LOWE'S HIW, INC.

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF ORANGE**

14 CLIVE J. HENDERSON,

15 Plaintiff,

16 v.

17 LOWE'S HIW, INC., a Washington corporation,

18 Defendant.

CASE NO.: 30-2011-00453045-CU-OE-CJC

**DEFENDANT LOWE'S HIW, INC.'S
ANSWER TO PLAINTIFF'S COMPLAINT
FOR DAMAGES**

Complaint filed: February 24, 2011

19
20
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28
DEFENDANT LOWE'S HIW, INC.'S ANSWER TO PLAINTIFF'S COMPLAINT FOR DAMAGES

Hunton & Williams LLP
550 South Hope Street, Suite 2000
Los Angeles, California 90071

1 Defendant Lowe's HIW, Inc. ("Lowe's" or "Defendant") hereby answers the unverified
 2 Complaint filed by Plaintiff Clive J. Henderson ("Plaintiff") as follows:

3 **GENERAL DENIAL**

4 Pursuant to section 431.30(d) of the California Code of Civil Procedure, Defendant denies,
 5 generally and specifically, each and every allegation in the Complaint. Defendant further denies,
 6 generally and specifically, that Plaintiff has been injured in any sum therein alleged, and that
 7 Plaintiff is entitled to damages or any other relief whatsoever by reason of any act or omission on the
 8 part of Defendant.

9 Without waiving or excusing the burden of proof of Plaintiff, or admitting that Defendant has
 10 any burden of proof, Defendant hereby asserts the following affirmative and other defenses:

11 **FIRST AFFIRMATIVE DEFENSE**

12 (Failure to State a Cause of Action)

13 1. Plaintiff's Complaint, and each claim contained therein, fails to state facts sufficient
 14 to constitute a claim upon which relief can be granted.

15 **SECOND AFFIRMATIVE DEFENSE**

16 (Failure to Exhaust Administrative Remedies)

17 2. Plaintiff's claims are barred in whole or in part because he failed to exhaust his
 18 administrative remedies.

19 **THIRD AFFIRMATIVE DEFENSE**

20 (Failure to Mitigate Damages)

21 3. Plaintiff had a duty to take reasonable steps to mitigate and/or avoid his damages. To
 22 the extent that Plaintiff failed to take such steps, he is barred in whole or in part from recovering
 23 damages in this action, if any.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 (Avoidable Consequences)

26 4. Plaintiff unreasonably failed to take advantage on a timely basis of any preventative
 27 or corrective safeguards to avoid harm.

FIFTH AFFIRMATIVE DEFENSE

(Discrimination Prevention)

5. Lowe's, at all relevant times herein, took all appropriate actions to prevent any discriminatory conduct from occurring, thereby satisfying all legal obligations Lowe's owed to Plaintiff, if any at all. Further, even if any unlawful conduct occurred, which Lowe's denies, such conduct was prohibited by Lowe's policies and was not within the actual or constructive knowledge of higher management in Lowe's corporate structure nor was it committed, countenanced, ratified, or approved by higher management in Lowe's corporate structure.

SIXTH AFFIRMATIVE DEFENSE

(Unable to Perform Essential Functions/Not Otherwise Qualified)

6. Plaintiff's claims are barred in whole or in part because Plaintiff was and/or is not able to perform the essential functions of his position with or without a reasonable accommodation.

SEVENTH AFFIRMATIVE DEFENSE

(Lowe's Engaged in Interactive Process)

7. To the extent that Plaintiff made a request that would trigger an obligation for Lowe's to engage in the interactive process with Plaintiff, Lowe's properly discharged any such obligation in good faith.

EIGHTH AFFIRMATIVE DEFENSE

(Plaintiff Failed to Engage in Interactive Process)

8. Plaintiff failed to engage in good faith in the interactive process with Lowe's.

NINTH AFFIRMATIVE DEFENSE

(Undue Hardship)

9. Accommodating Plaintiff's disability in the manner requested by Plaintiff would cause an undue hardship on Lowe's operations.

Hunton & Williams LLP
550 South Hope Street, Suite 2000
Los Angeles, California 90071

TENTH AFFIRMATIVE DEFENSE

(Requested Accommodation Unreasonable)

10. Lowe's is not required to accommodate Plaintiff in the manner he requests because his requested accommodation is not reasonable.

ELEVENTH AFFIRMATIVE DEFENSE

(Privilege and/or Justification)

11. Plaintiff's claims are barred in whole or in part because Lowe's actions and omissions, and those of its managers, were privileged and/or justified.

TWELFTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

12. Plaintiff's claims are barred by the applicable statute(s) of limitations.

THIRTEENTH AFFIRMATIVE DEFENSE

(Estoppel/Waiver)

13. Plaintiff is estopped from advancing the claims asserted and/or has waived his right to advance the claims asserted.

FOURTEENTH AFFIRMATIVE DEFENSE

(Workers' Compensation Act Exclusivity)

14. Plaintiff's claims are barred in part by California Labor Code section 3600 *et seq.*, which provides the exclusive remedy for some of Plaintiff's alleged injuries.

FIFTEENTH AFFIRMATIVE DEFENSE

(Punitive Damages Not Available)

15. Plaintiff fails to allege facts sufficient to support an award of punitive damages as a matter of law.

Hunton & Williams LLP
550 South Hope Street, Suite 2000
Los Angeles, California 90071

SIXTEENTH AFFIRMATIVE DEFENSE

(Punitive Damages Unconstitutional)

16. An award of punitive damages would be an unconstitutional denial of AGF's right to due process and/or equal protection under the Fifth and Fourteenth Amendments to the United States Constitution and Articles I and IV of the California Constitution.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Duplicative Claims)

17. Plaintiff's Complaint asserts claims for relief that are duplicative and based upon the same alleged facts. Plaintiff is precluded from recovering for damages on duplicative claims.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Legitimate, Non-Discriminatory Actions)

18. Any recovery on Plaintiff's Complaint is barred in whole or in part because the actions alleged to be taken with respect to Plaintiff by Defendant in the Complaint were undertaken for legitimate, non-discriminatory reasons and all actions taken by Defendant were for good cause and not for any improper reason or motive.

NINETEENTH AFFIRMATIVE DEFENSE

(Scope of Authority)

19. Any alleged unlawful conduct engaged in by the agents of Lowe's upon which Plaintiff bases his claims, if they were made at all, were made outside the course and scope of such agents' authority. Accordingly, Plaintiff is barred from asserting any purported cause of action against Lowe's based on this alleged conduct.

TWENTIETH AFFIRMATIVE DEFENSE

(Prompt Investigation of Harassment and Discrimination Allegations)

20. Plaintiff is barred from any recovery on the Complaint because Lowe's promptly conducted an appropriate investigation of Plaintiff's discrimination allegations, if any.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Offset)

21. Any damages claimed by Plaintiff should be reduced to the extent they are subject to an offset, representing amounts improperly obtained from Defendant or which would constitute unjust enrichment of Plaintiff.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Additional Affirmative Defenses)

22. Defendant presently has insufficient knowledge and/or information on which to form a belief as to whether he may have additional, as yet unstated, affirmative defenses available. Defendant reserves the right to assert additional defenses if discovery indicates that such additional affirmative defenses would be appropriate.

PRAYER


WHEREFORE, Defendant prays for judgment as follows:

1. That all relief requested in the Complaint be denied;
2. That Plaintiff take nothing by this action;
3. That Defendant be awarded the costs of suit incurred herein;
4. That Defendant be awarded its attorneys' fees according to proof; and
5. That the Court award Defendant such other and further relief as the Court may deem proper.

DATED: April 11, 2011

HUNTON & WILLIAMS LLP

By:


CHRISTIANE A. ROUSSELL
Attorneys for Defendant
LOWE'S HIW, INC.

CERTIFICATE OF SERVICE**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to this action. My business address is: 550 S. Hope Street, Suite 2000, Los Angeles, California 90071.

On April 11, 2011, I served the foregoing document(s) described as

DEFENDANT LOWE'S HIW, INC'S ANSWER TO PLAINTIFF'S COMPLAINT FOR DAMAGES

on the interested parties in this action:

Thomas L. Difloure
Attorney at Law
13952 Bora Bora Way
Suite 319
Marina del Rey, California 90292



By FAX: by causing a true copy thereof to be sent via facsimile to the attorney(s) of record at the telecopier number(s) so indicated above and that the transmission was reported as completed and without error.



By MAIL: by placing true and correct copy(ies) thereof in an envelope addressed to the attorney(s) of record, addressed as stated above.



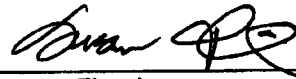
By PERSONAL SERVICE: by causing a true copy thereof to be delivered by hand on the addressee, addressed as stated above



By FEDERAL EXPRESS: by causing same to be delivered via Federal Express to the addressee(s).

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 11, 2011, Los Angeles, California.



Susan J. Fleming

EXHIBIT C

THOMAS L. DIFLOURE

13952 Bora Bora Way, #319
Marina del Rey, CA 90292

ATTORNEY AT LAW

Tel. (310) 823-8052 Fax: (310) 823-3571
e-mail: entlaw@earthlink.net

June 7, 2011

FOR SETTLEMENT PURPOSES ONLY

Emily Burkhardt Vicente, Esq.
Hunton & Williams, LLP
550 S. Hope St., Suite 20000
Los Angeles, CA 90071
Via email to cbvicente@hunton.com

Re: Clive Henderson v. Lowes, Case No. 30-2011-00453045-CU-OF-CJC

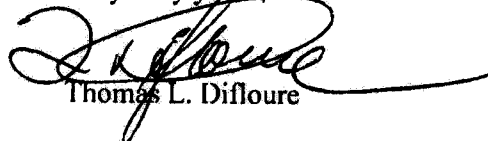
Dear Ms. Burkhardt Vicente:

Per our discussions and emails, my client, Clive Henderson, makes the following settlement demand to your client, Lowe's HIW, Inc. This demand is for settlement purposes only and nothing herein should be construed as an admission on the part of my client as to any factual or legal issues in dispute between the parties or a waiver of any rights to which my client is otherwise entitled.

1. Monetary compensation in the amount of \$250,000 to resolve all claims alleged in the Complaint filed in this matter, including attorney's fees under Government Code §12965;
2. Henderson will voluntarily resign from Lowe's at a time to be mutually agreed upon by the parties.
3. Henderson and Lowe's will enter into a Settlement and Release Agreement that will release Lowe's from any and all claims that may have arisen during Henderson's tenure at Lowe's.

This demand shall remain in effect for fourteen (14) days from the date of this letter, or in the event that the parties enter into good faith negotiations to resolve this matter, until such date as the parties may mutually agree upon in writing.

Very truly yours,



Thomas L. Difloure

EXHIBIT D

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Thomas L. Difloure SBN 166325 13952 Boca Bon Way, #319 Marina del Rey, CA 90292 TELEPHONE NO: 310-823-8052 FAX NO: 310-733-5608 ATTORNEY FOR (Name): Clive J. Henderson		ELECTRONICALLY FILED Superior Court of California, County of Orange 02/24/2011 at 09:52:51 AM Clerk of the Superior Court By Enrique Veloz, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS: 700 Civic Center Drive West MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, CA 92701 BRANCH NAME: Central Justice Center		
CASE NAME: Henderson v. Lowe's HIW, Inc.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
		CASE NUMBER: 30-2011-00463046-CU-06-CJC Judge Tam Nomoto Schumann

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PIPD/W (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIPD/W (23) Non-PIP/W (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (06) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/W tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): 5
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: February 23, 2011

Thomas L. Difloure

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use
 Judicial Council of California
 CM-010 (Rev. July 1, 2007)

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 3.30, 3.220, 3.400-3.403, 3.740;
 Cal. Standards of Judicial Administration, chd. 3.10
 www.courtinfo.ca.gov



CORPORATION SERVICE COMPANY

Notice of Service of Process

Transmittal Number: 8540833
Date Processed: 03/15/2011

Primary Contact: Ms. Patsy Blackburn
Lowe's Companies, Inc.
1000 Lowe's Blvd
Mooreville, NC 28117

Copy of transmittal only provided to: Stacey Davidson
Dona Manley
Holley El-Akkad
Galther Keener Jr.
Shannon Montgomery

Entity:	Lowe's HIW, Inc. Entity ID Number 0295162
Entity Served:	Lowe's HIW, Inc.
Title of Action:	Clive J. Henderson vs. Lowe's HIW, Inc.
Document(s) Type:	Summons/Complaint
Nature of Action:	Discrimination
Court/Agency:	Orange County Superior Court, California
Case/Reference No:	30-2011-00453045-CU-OE-CJC
Jurisdiction Served:	California
Date Served on CSC:	03/14/2011
Answer or Appearance Due:	30 Days
Originally Served On:	CSC
How Served:	Personal Service
Sender Information:	Thomas L. Diffoure 310-823-8052

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
CSC is SAS70 Type II certified for its Litigation Management System.
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE**

**ALTERNATIVE DISPUTE RESOLUTION (ADR)
INFORMATION PACKAGE**

NOTICE TO PLAINTIFF(S) AND/OR CROSS-COMPLAINANT(S):

Rule 3.221(c) of the California Rules of Court requires you to serve a copy of the ADR Information Package along with the complaint and/or cross-complaint.

**California Rules of Court – Rule 3.221
Information about Alternative Dispute Resolution (ADR)**

(a) Each court shall make available to the plaintiff, at the time of filing of the complaint, an ADR Information Package that includes, at a minimum, all of the following:

(1) General information about the potential advantages and disadvantages of ADR and descriptions of the principal ADR processes.

(2) Information about the ADR programs available in that court, including citations to any applicable local court rules and directions for contacting any court staff responsible for providing parties with assistance regarding ADR.

(3) Information about the availability of local dispute resolution programs funded under the Dispute Resolutions Program Act (DRPA), in counties that are participating in the DRPA. This information may take the form of a list of the applicable programs or directions for contacting the county's DRPA coordinator.

(4) An ADR stipulation form that parties may use to stipulate to the use of an ADR process.

(b) A court may make the ADR Information Package available on its Web site as long as paper copies are also made available in the clerk's office.

(c) The plaintiff must serve a copy of the ADR Information Package on each defendant along with the complaint. Cross-complainants must serve a copy of the ADR Information Package on any new parties to the action along with the cross-complaint.

SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE

ADR Information

Introduction.

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts and others offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. ADR is usually less formal, less expensive, and less time-consuming than a trial. ADR can also give people more opportunity to determine when and how their dispute will be resolved.

BENEFITS OF ADR.

Using ADR may have a variety of benefits, depending on the type of ADR process used and the circumstances of the particular case. Some potential benefits of ADR are summarized below.

Save Time. A dispute often can be settled or decided much sooner with ADR; often in a matter of months, even weeks, while bringing a lawsuit to trial can take a year or more.

Save Money. When cases are resolved earlier through ADR, the parties may save some of the money they would have spent on attorney fees, court costs, experts' fees, and other litigation expenses.

Increase Control Over the Process and the Outcome. In ADR, parties typically play a greater role in shaping both the process and its outcome. In most ADR processes, parties have more opportunity to tell their side of the story than they do at trial. Some ADR processes, such as mediation, allow the parties to fashion creative resolutions that are not available in a trial. Other ADR processes, such as arbitration, allow the parties to choose an expert in a particular field to decide the dispute.

Preserve Relationships. ADR can be a less adversarial and hostile way to resolve a dispute. For example, an experienced mediator can help the parties effectively communicate their needs and point of view to the other side. This can be an important advantage where the parties have a relationship to preserve.

Increase Satisfaction. In a trial, there is typically a winner and a loser. The loser is not likely to be happy, and even the winner may not be completely satisfied with the outcome. ADR can help the parties find win-win solutions and achieve their real goals. This, along with all of ADR's other potential advantages, may increase the parties' overall satisfaction with both the dispute resolution process and the outcome.

Improve Attorney-Client Relationships. Attorneys may also benefit from ADR by being seen as problem-solvers rather than combatants. Quick, cost-effective, and satisfying resolutions are likely to produce happier clients and thus generate repeat business from clients and referrals of their friends and associates.

DISADVANTAGES OF ADR.

ADR may not be suitable for every dispute.

Loss of protections. If ADR is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure, and review for legal error by an appellate court.

Less discovery. There generally is less opportunity to find out about the other side's case with ADR than with litigation. ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute.

Additional costs. The neutral may charge a fee for his or her services. If a dispute is not resolved through ADR, the parties may have to put time and money into both ADR and a lawsuit.

Effect of delays if the dispute is not resolved. Lawsuits must be brought within specified periods of time, known as statutes of limitation. Parties must be careful not to let a statute of limitations run out while a dispute is in an ADR process.

TYPES OF ADR IN CIVIL CASES.

The most commonly used ADR processes are arbitration, mediation, neutral evaluation and settlement conferences.

Arbitration. In arbitration, a neutral person called an "arbitrator" hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are often relaxed. Arbitration may be either "binding" or "nonbinding." *Binding arbitration* means that the parties waive their right to a trial and agree to accept the arbitrator's decision as final. Generally, there is no right to appeal an arbitrator's decision. *Nonbinding* arbitration means that the parties are free to request a trial if they do not accept the arbitrator's decision.

Cases for Which Arbitration May Be Appropriate. Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

Cases for Which Arbitration May Not Be Appropriate. If parties want to retain control over how their dispute is resolved, arbitration, particularly binding arbitration, is not appropriate. In binding arbitration, the parties generally cannot appeal the arbitrator's award, even if it is not supported by the evidence or the law. Even in nonbinding arbitration, if a party requests a trial and does not receive a more favorable result at trial than in arbitration, there may be penalties.

Mediation. In mediation, an impartial person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties.

Cases for Which Mediation May Be Appropriate. Mediation may be particularly useful when parties have a relationship they want to preserve. So when family members, neighbors, or business partners have a dispute, mediation may be the ADR process to use. Mediation is also effective when emotions are getting in the way of resolution. An effective mediator can hear the parties out and help them communicate with each other in an effective and nondestructive manner.

Cases for Which Mediation May Not Be Appropriate. Mediation may not be effective if one of the parties is unwilling to cooperate or compromise. Mediation also may not be effective if one of the parties has a significant advantage in power over the other. Therefore, it may not be a good choice if the parties have a history of abuse or victimization.

Neutral Evaluation. In neutral evaluation, each party gets a chance to present the case to a neutral person called an "evaluator." The evaluator then gives an opinion on the strengths and weaknesses of each party's evidence and arguments and about how the dispute could be resolved. The evaluator is

often an expert in the subject matter of the dispute. Although the evaluator's opinion is not binding, the parties typically use it as a basis for trying to negotiate a resolution of the dispute.

Cases for Which Neutral Evaluation May Be Appropriate. Neutral evaluation may be most appropriate in cases in which there are technical issues that require special expertise to resolve or the only significant issue in the case is the amount of damages.

Cases for Which Neutral Evaluation May Not Be Appropriate. Neutral evaluation may not be appropriate when there are significant personal or emotional barriers to resolving the dispute.

Settlement Conferences. Settlement conferences may be either mandatory or voluntary. In both types of settlement conferences, the parties and their attorneys meet with a judge or a neutral person called a "settlement officer" to discuss possible settlement of their dispute. The judge or settlement officer does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. Settlement conferences are appropriate in any case where settlement is an option. Mandatory settlement conferences are often held close to the date a case is set for trial.

ADDITIONAL INFORMATION.

In addition to mediation, arbitration, neutral evaluation, and settlement conferences, there are other types of ADR, including conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR types. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute.

To locate a dispute resolution program or neutral in your community:

- Contact the California Department of Consumer Affairs, Consumer Information Center, toll free, 1-800-852-5210
- Contact the Orange County Bar Association at (949) 440-6700
- Look in the Yellow Pages under "Arbitrators" or "Mediators"

Free mediation services are provided under the Orange County Dispute Resolution Program Act (DRPA). For information regarding DRPA, contact:

- Community Service Programs, Inc. (949) 851-3168
- Orange County Human Relations (714) 834-7198

For information on the Superior Court of California, County of Orange court ordered arbitration program, refer to Local Rule 360.

The Orange County Superior Court offers programs for Civil Mediation and Early Neutral Evaluation (ENE). For the Civil Mediation program, mediators on the Court's panel have agreed to accept a fee of \$300 for up to the first two hours of a mediation session. For the ENE program, members of the Court's panel have agreed to accept a fee of \$300 for up to three hours of an ENE session. Additional information on the Orange County Superior Court Civil Mediation and Early Neutral Evaluation (ENE) pilot programs is available on the Court's website at www.occourts.org.

EXHIBIT E

Print this page

CASE SUMMARY				
Case No.	Case Title	Case Type	Filing Date	Category
30-2011-00453045-CU-OE-CJC	CLIVE J. HENDERSON VS. LOWE'S HIW, INC.	OTHER EMPLOYMENT	02/24/2011	CIVIL - UNLIMITED

Participants

Results 1 - 4 of 4

Name	Type	Assoc	Start Date	End Date
LOWE'S HIW, INC.	DEFENDANT		02/25/2011	
HUNTON & WILLIAMS LLP	ATTORNEY		04/11/2011	
THOMAS L. DIFLOURE	ATTORNEY		02/25/2011	
CLIVE J. HENDERSON	PLAINTIFF		02/25/2011	

Hearings

Event	Scheduled Date	Start Time	Dept	Judge
No Records Found				

Register of Actions

Results 1 - 12 of 12

ROA #	<input type="checkbox"/> Add to Cart	+/-	Docket Entry	Filing Date	Pages
12	<input type="checkbox"/>		PAYMENT RECEIVED BY FOR 167 - ANSWER OR OTHER 1ST PAPER IN THE AMOUNT OF 395.00, TRANSACTION NUMBER 10876397 AND RECEIPT NUMBER 10700289.	04/12/2011	1
11	<input type="checkbox"/>	<input checked="" type="checkbox"/>	ANSWER TO COMPLAINT FILED BY LOWE'S HIW, INC. ON 04/11/2011	04/11/2011	7
10			E-FILING TRANSACTION 11807 RECEIVED ON 04/11/2011 10:14:30 AM.	04/12/2011	
9	<input type="checkbox"/>	<input checked="" type="checkbox"/>	PROOF OF SERVICE OF 30-DAY SUMMONS & COMPLAINT - PERSONAL FILED BY HENDERSON, CLIVE J. ON 03/15/2011	03/15/2011	1
8			E-FILING TRANSACTION 232245 RECEIVED ON 03/14/2011 05:41:49 PM.	03/15/2011	
7	<input type="checkbox"/>	<input checked="" type="checkbox"/>	SUMMONS ISSUED AND FILED FILED BY HENDERSON, CLIVE J. ON 02/28/2011	02/28/2011	1
6			E-FILING TRANSACTION 230120 RECEIVED ON 02/28/2011 12:16:34 PM.	03/01/2011	
5	<input type="checkbox"/>		CASE ASSIGNED TO JUDICIAL OFFICER SCHUMANN, TAM NOMOTO ON 02/24/2011.	02/24/2011	1
4	<input type="checkbox"/>		PAYMENT RECEIVED BY FOR 166 - COMPLAINT OR OTHER 1ST PAPER IN THE AMOUNT OF 395.00, TRANSACTION NUMBER 10842938 AND RECEIPT NUMBER 10666830.	02/25/2011	1
3	<input type="checkbox"/>	<input checked="" type="checkbox"/>	CIVIL CASE COVER SHEET FILED BY HENDERSON, CLIVE J. ON 02/24/2011	02/24/2011	2
2	<input type="checkbox"/>	<input checked="" type="checkbox"/>	COMPLAINT FILED BY HENDERSON, CLIVE J. ON 02/24/2011	02/24/2011	19
1			E-FILING TRANSACTION 229794 RECEIVED ON 02/24/2011 02:57:41 PM.	02/25/2011	

https://ocapps.occourts.org/civilwebShopping/DisplayCaseInformation.do?src=print_src_dtl... 7/6/2011

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Josephine Tucker and the assigned discovery Magistrate Judge is Marc Goldman.

The case number on all documents filed with the Court should read as follows:

SACV11- 995 JST (MLGx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☐ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☒ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/> Clive J. Henderson	DEFENDANTS Lowe's HIW, Inc.
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Thomas L. Difloure (SBN 166325) 13952 Bora Bora Way, #319 Marina Del Rey, CA 90292; (310) 823-8052	Attorneys (If Known) Emily Burkhardt Vicente (SBN 263990); Christiane A. Roussel (SBN 249847) Susan H. Shin (SBN 260369) Hunton & Williams LLP, 550 S. Hope Street, Suite 2000 Los Angeles, CA 90071; (213) 532-2000

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:35%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:45%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td align="center"><input checked="" type="checkbox"/> 1</td> <td align="center"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td align="center"><input type="checkbox"/> 4</td> <td align="center"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td align="center"><input type="checkbox"/> 2</td> <td align="center"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td align="center"><input type="checkbox"/> 5</td> <td align="center"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td align="center"><input type="checkbox"/> 3</td> <td align="center"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td align="center"><input type="checkbox"/> 6</td> <td align="center"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.) <input type="checkbox"/> 1 Original Proceeding <input checked="" type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): _____ <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (Check 'Yes' only if demanded in complaint.)	CLASS ACTION under F.R.C.P. 23: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No MONEY DEMANDED IN COMPLAINT: \$ _____
---	---

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) Removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

VII. NATURE OF SUIT (Place an X in one box only.) <table style="width:100%; border: none;"> <tr> <td style="width:16.6%; vertical-align: top;"> OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes </td> <td style="width:16.6%; vertical-align: top;"> CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property </td> <td style="width:16.6%; vertical-align: top;"> TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions </td> <td style="width:16.6%; vertical-align: top;"> TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights </td> <td style="width:16.6%; vertical-align: top;"> PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other </td> <td style="width:16.6%; vertical-align: top;"> LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. 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FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes
 If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes
 If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange County	

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	North Carolina

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange County	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): *Christal A. [Signature]* Date July 6, 2011

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))